



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ferranti International Defense Systems, Inc.

File: B-237555

Date: February 27, 1990

Edward F. Canfield, Esq., Casey, Scott, Canfield & Haggstad, P.C., for the protester.

Marvin D. Wieman, for Raven Industries, Inc., an interested party.

Judith A. Sukol, Esq., and John Reynolds, Esq., Department of the Army, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where technical evaluation scheme in request for proposals sets forth prior experience and performance as an evaluation factor and protester referenced in its proposal its performance under prior contracts, the agency properly investigated the protester's performance under these and other prior contracts of which it was aware in making its technical acceptability determination.
2. Agency properly considered unexplained reductions in protester's final price as an indication that its proposal presented performance risks.
3. An agency has no obligation to reopen negotiations so that an offeror may remedy defects introduced into a previously acceptable proposal by a best and final offer since the offeror assumes the risk that changes in its final offer might raise questions about its ability to meet the requirements of the solicitation.
4. Decision not to award to lowest-priced offeror was reasonable where source selection authority determined that the proposal represented a performance risk and that the technical superiority of another offeror's proposal outweighed its cost premium.

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DECISION

Ferranti International Defense Systems, Inc. (FIDS), protests the award of a fixed-price contract to Raven Industries, Inc., under request for proposals (RFP) No. DAAB07-89-R-U503, issued by the Department of the Army for spare parts consisting of 43 National Stock Numbers to support the AN/VRC-12 radio set family. FIDS contends that it should have received the award as the lowest-priced offeror under the portion set aside for a defense mobilization producer.

We deny the protest.

The RFP was issued on December 21, 1988, and provided for half of the requirement to be awarded in order to establish a mobilization base and the other half to be awarded under full and open competition after exclusion of the winner of the first award, in order to establish a second source. Award was to be made on the basis of the offer providing the best overall value to the government based on four evaluation factors listed in the solicitation in descending order of importance--manufacturing/production, cost/price, product reliability, and management. Past experience was a subfactor under both the manufacturing/production factor and the product reliability factor. Past performance was a subfactor under the management evaluation factor. With respect to the past performance evaluation, the solicitation provided that the offeror's past performance would be evaluated based upon data provided in the proposal for jobs of comparable complexity and/or records of government agencies with an emphasis on the degree to which the offeror met cost, technical and delivery objectives.

Eight proposals were received by the closing date of April 11, 1989. Two of the eight offerors were determined to be technically unacceptable and outside the competitive range. The remaining six offerors were determined to be within the competitive range and written items for negotiation were forwarded to these offerors by letter dated June 6. After receipt of the offerors' written responses, oral discussions were then conducted with all the offerors. On August 10, best and final offers (BAFOs) were requested with a closing date of August 24. Two of the six offerors withdrew and elected not to submit BAFOs. A preaward survey was conducted on all of the remaining four offerors by the Defense Contract Administration Services Management Area (DCASMA), Philadelphia. FIDS' survey report was forwarded to the agency on September 11. The preaward survey recommended no award to FIDS based on unsatisfactory

production and quality assurance capabilities due to an unsatisfactory performance record and the failure of a major subcontractor to have the proper quality control program.

The BAFOs of the four remaining offerors were subsequently evaluated using a rating of outstanding, acceptable, marginal, susceptible and unacceptable. On the mobilization portion of the requirement, Raven received an overall rating of acceptable based on its receiving acceptable ratings in the most important subfactors as well as outstanding ratings in the subfactors for product process and flow analysis, personnel, and past experience. Raven also received acceptable ratings in both product reliability and management factors. FIDS received a marginal rating in all three non-price evaluation areas primarily because of an inadequately substantiated drop in its BAFO price, a history of poor past performance and alleged quality control deficiencies. The evaluators specifically found that a substantial performance risk was associated with FIDS' proposal because FIDS' final proposed price of \$56,057,000, which was the lowest received, represented a significant, insufficiently explained decrease of \$19.6 million (26 percent) from its initial price.

The results of the final proposal evaluation were presented to the source selection authority (SSA). On September 21, the SSA issued his source selection decision authorizing an award to Raven for the mobilization base portion of the requirement at an evaluated price \$5 million higher than FIDS' offer. The SSA found that giving the appropriate consideration to the evaluation criteria set forth in the RFP and the relative weights, Raven's proposal represented the best overall value to the government. The SSA stated that "Raven's demonstrated successful approach to planning and production of AN/VRC-12 spare parts, by having successfully completed numerous contracts for various VRC-12 spare parts either on schedule or ahead of schedule," was worth the additional cost. With respect to the protester's lower-priced proposal, the SSA concluded that it represented a significant performance risk due to its lower overall rating. Raven was awarded a contract on September 25. This protest was filed on October 24.

FIDS essentially objects to the award to Raven at a higher price. FIDS also questions the technical evaluation of its proposal as marginal and as more of a risk than Raven's proposal; it argues that its BAFO contained adequate justification for its price reduction or, alternatively, that its BAFO should have been the subject of further discussions. FIDS also maintains that the contracting officer improperly relied on negative data from the preaward

survey that was incorrect. Finally, FIDS contends that Raven had an unfair advantage because of simultaneous discussions with the contracting officer concerning other awards for AN/VRC-12 spares.

Regarding the agency's evaluation of FIDS' proposal as marginal, generally, we will examine such evaluations to insure that they are reasonable and consistent with the evaluation criteria. The determination of the relative merits of a proposal is primarily a matter of administrative discretion which we will not disturb unless it is shown to be unreasonable. Wellington Assocs., Inc., B-228168.2, Jan. 28, 1988, 88-1 CPD ¶ 85.

FIDS notes that the primary reason the agency gave FIDS a marginal rating was FIDS' unsubstantiated reduction in its BAFO price. FIDS, however, maintains that adequate justification for its price reduction was included in its BAFO, where FIDS indicated its: (1) intention to redistribute the module mix between FIDS and its subcontractors; (2) decision to capitalize \$1 million worth of test equipment; and (3) estimates of future savings due to efficiency. FIDS contends that its offer was responsive, did not reduce the quantity or specifications of the products to be supplied, and that FIDS was responsible for producing the items, regardless of the profit margin.

The Army asserts that these general statements alone were inadequate to determine if FIDS' price reductions were justified. The Air Force argues that FIDS failed to revise its technical proposal to indicate the effect of the price reduction on its technical proposal. Primarily, the agency points out that FIDS failed to specify the reduction in labor hours represented by this price decrease and to show how it could perform the work at the lower price. The Army states that its analysis of the basis for the price reduction was further complicated by FIDS' significant increase in overhead and general and administrative rates in its BAFO. Also, for example, the Army found that, without more information, it was not clear why or how the change in module mix between FIDS and its subcontractors explained the lower price. It further advises that while FIDS implied that the subcontractors had revised their prices downward, no pricing information associated with these revisions were submitted with the BAFO. As a result, the Army believes it reasonably concluded that FIDS' unsubstantiated, significant price reduction presented a significant performance risk.

We think the agency's determination that FIDS' BAFO price reduction was inadequately substantiated and justified a marginal and significant performance risk rating is

supported by the record. Initially, we note that the BAFO request specifically required, in the event of a price revision, a complete cost breakdown setting forth the revisions and the basis for the changes. The risk of poor performance when a contractor is forced to perform at little or no profit is, in general, a legitimate concern in the evaluation of proposals. See Burnside-Ott Aviation Training Center, Inc., et al., B-233113 et al., Feb. 15, 1989, 89-1 CPD ¶ 158. An agency may properly downgrade a BAFO as being technically deficient when it does not contain an adequate explanation of price reductions from a previously acceptable initial proposal and may, where consistent with the terms of the RFP, award to a higher-priced technically superior offeror. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441. Here, the record indicates that FIDS' price reduction was not adequately explained as required by the RFP. FIDS' BAFO merely contained general statements supporting the reduction without any detailed or persuasive explanation for it. FIDS failed to explain how the price reduction affected its technical proposal generally and the labor hours proposed specifically. Moreover, the BAFO statements that the price reduction was based on FIDS' intention to redistribute module mix production between FIDS and the subcontractors or on savings based on future efficiencies, without supporting evidence, reasonably could be considered as an inadequate or speculative basis for the price reduction. We therefore conclude that the agency reasonably considered FIDS' proposal marginal because it concluded that the firm's low fixed price represented a significant performance risk.

Further, an agency is not obligated to reopen negotiations so that an offeror may remedy defects introduced into a previously acceptable offer by a BAFO. See RCA Service Co., B-219643, Nov. 18, 1985, 85-2 CPD ¶ 563. As indicated above, offerors were specifically advised to explain any price revision proposed in their BAFOs. Thus, FIDS assumed the risk that changes in its final offer might raise questions about its ability to perform and thus result in a determination that its proposal presented a high performance risk. Consequently, we find that the Army was not required to reopen discussions to allow FIDS to further explain its price reduction.

FIDS also alleges that the contracting officer improperly used information contained in a preaward survey to

determine technical acceptability.^{1/} While the agency admits that the information in the preaward survey was known by the SSA prior to making his source selection decision, the agency maintains that much of the same information was previously made available by FIDS or collected during the source selection process. In this regard, past performance was an evaluated subfactor and offerors were required to provide data in their proposals for jobs of comparable complexity and/or records of government agencies with emphasis on the degree to which the offeror met cost, technical and delivery objectives. FIDS provided this information in its initial proposal and also provided an explanation in its BAFO for prior performance delinquencies. The agency states that as part of the source selection process, the evaluation team had investigated, reviewed and verified this information as well as other information obtained from government sources. The agency further states that this was prior to receipt of the preaward survey which merely confirmed the evaluator's already established concerns.

A contracting agency, in evaluating proposals, may consider evidence obtained from sources outside the proposals so long as the use of extrinsic evidence is consistent with established procurement practice. Thus, where the solicitation provides for references to be used in the evaluation, the agency may consider the unsatisfactory past performance of an offeror under a recent contract with the agency, in effect furnishing its own reference. Western Medical Personnel, Inc., 66 Comp. Gen. 699 (1987), 87-2 CPD ¶ 310. Indeed, we have stated that in appropriate circumstances the contracting officer should consider extrinsic evidence when evaluating proposals. See Univox California, Inc., B-210941, Sept. 30, 1983, 83-2 CPD ¶ 395. For example, we have held that an agency acted improperly in ignoring an offeror's prior performance, listed in the proposal, as the incumbent contractor providing the same services for the procuring agency. Inlingua Schools of Languages, B-229784, Apr. 5, 1988, 88-1 CPD ¶ 340; see also New Hampshire-Vermont Health Service, 57 Comp. Gen. 347 (1978), 78-1 CPD ¶ 202.

^{1/} FIDS also contends that the preaward survey was biased and contained negative inferences. FIDS has provided no evidence to support this contention. Prejudicial motives will not be attributed to agency officials on the basis of unsupported allegations, inferences or suppositions. See The Aeronautics Div. of AAR Brooks & Perkins, B-222516, B-222791, Aug. 5, 1986, 86-2 CPD ¶ 151.

The record shows that the evaluation team possessed information, basically from FIDS' proposal and agency records, concerning FIDS' prior performance which supported the marginal rating for past performance without reference to the preaward survey. Accordingly, we do not believe the preaward survey necessarily influenced the source selection decision. We note that, with regard to FIDS' prior performance, the record shows that FIDS admits, in a letter to the DCASMA in response to notification of FIDS placement in the contractor improvement program (CIP), to complete or partial fault for delinquencies under at least six current Department of Defense contracts. FIDS also does not dispute that it is currently in the CIP, nor apparently did it dispute its placement in the program. We think the agency properly could rate FIDS' proposal marginal for these instances of delinquent performance.

Notwithstanding its marginal ratings, the protester argues that it should have received the award based on its lower price. However, the government is not required to make award to a marginally rated firm offering the lowest price under an RFP unless the RFP specifies that price will be the determinative factor. We have upheld awards to technically superior, higher-priced offerors where the record shows that the offeror's price premium was justified in light of its technical superiority. Our role is to determine whether the selection decision is rationally based. Unidynamics/ St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609.

As indicated above, we find that the agency's evaluation was reasonable and in conformance with the evaluation scheme set forth in the RFP. All members of the evaluation board considered FIDS' proposal to be marginal mainly because of its unsubstantiated labor hour changes and past performance. The SSA in his determination specifically stated that he considered the findings of the evaluation board and compared the four proposals giving appropriate consideration to the evaluation criteria set forth in the RFP and their relative weights. On that basis, the SSA selected Raven to receive the defense mobilization award. The SSA recognized that FIDS offered a lower price but concluded that FIDS' offer represented a performance risk due to its low overall, marginal rating.

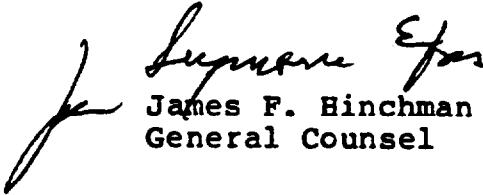
In our opinion, the technical evaluation was reasonable, FIDS' proposal simply was not evaluated to be as good as Raven's proposal, and the agency reasonably determined that Raven's demonstrated successful approach to planning and production of the spare parts was worth the additional cost. The award to Raven was consistent with the RFP scheme, which

specifically stated that manufacturing/production was more important than price.

Finally, FIDS alleges that Raven had an unfair advantage because of simultaneous discussions with the contracting officer concerning other awards for AN/VRC-12 spare parts. FIDS maintains that the fact that Raven negotiated for these other contracts during the same time period with the same contracting officer raises the question of whether or not Raven was placed in a preferential position as a result of the discussions about the other procurements.

Our Office has held that the government is under no obligation to eliminate an advantage which a firm may enjoy because of its particular circumstances, including the award of other contracts by the government, unless the advantage has resulted from unfair action on the part of the government. Nuclear Metals Inc., 64 Comp. Gen. 290 (1985), 85-1 CPD ¶ 217. There is no showing here that Raven has an unfair advantage or that its receipt of contemporaneous or prior awards is somehow unlawful or influenced the awards here.

The protest is denied.


James F. Hinchman
General Counsel